THE HON'BLE SRI JUSTICE N.V. RAMANA

C.R.P. No. 2520 of 2002

Oral order:

The orders dated 3-4-2002 passed by the Principal Junior Civil Judge, Bobbili, in O.S. No. 162 of 1999, receiving the unregistered Adoption Deed dated 9-9-1975 through the evidence of D.W.3. is assailed in this revision.

The learned counsel for the petitioner submits that Court below erred in receiving the unregistered Adoption Deed in evidence through D.W.3. According to the learned counsel, the Adoption Deed being a document fabricated on the old stamp paper and insufficiently stamped, could not have been received in evidence. The learned counsel submits that as per Section 17 of the Registration Act, the Adoption Deed is admissible in evidence only if it is registered, and inasmuch as the Adoption Deed is an unregistered one, the same could not have been received in evidence. According to the learned counsel, inasmuch as the Adoption Deed is insufficiently stamped, the Court below ought to have referred the matter to the District Collector for impounding the same under Sections 35 to 38 of the Stamp Act.

The learned counsel appearing on behalf of the respondents argued to sustain the order. She submitted that the Adoption Deed is not a forged document as alleged by the petitioner, but was executed by the original parents of D.W.3 giving her in adoption to one Appanna and D.W.1. According to her, in respect of an adoption by a Hindu, no execution of Adoption Deed is necessary, much less registered. In support of this contention, she placed strong reliance on the judgement of this Court in ***S. Parameswara Rao v. State of A.P.***[1] She thus

submitted that there was nothing wrong in the Court below receiving the Adoption Deed in evidence through D.W.3, who in fact was adopted by Appanna and D.W.1.

The point that arises for consideration in this case is whether the Court below erred in receiving the Adoption Deed in evidence through the D.W.1, and if so, whether it requires registration?

To consider this question, a brief reference may be made to facts, which led to the filing of the C.R.P. One Ms. Neelapu Manju, represented by her mother and natural guardian filed suit for declaration to declare that she is a pauper and for a consequential relief of injunction restraining the defendant Nos. 2 and 3 from issuing Class-I Legal Heir Certificate to defendant No.1 as she is only the Class-I legal heir of the deceased Neelapu Appanna and from disbursing the retirement benefits of the deceased or from providing employment to any of the nominees of defendant No. 1 in the place of the deceased, on compassionate grounds and for other reliefs.

As per Section 17 of the Registration Act any document which operate to create, declare, assign, limit or extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of Rs.100/- and above of immoveable property requires registration. It is not the case of the plaintiff that by virtue of the adoption deed or contents of the adoption deed sought to be marked indicates or creates any right in favour of the adopted person. In the absence of such contention or averment, it does not require any registration. Section 16 of the Hindu Adoption and Maintenance Act indicates that whenever any document registered under any law for the time being in force is produced before any Court, purporting to record the adoption made and signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of the Act, unless

and until it is disproved. A plain reading of the provision clearly indicates that Section 16 is only a rule of evidence and it cannot be construed as mandatory provision requiring execution and registration of adoption deed. A similar question came up for consideration before this Court in ***S. Parameswara Rao v. State of A.P.***. This Court while dealing with Sections 11 and 12 of the Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, having considered the question whether a valid adoption can be made even without execution of adoption deed and its registration, held that for validity of adoption by a Hindu, it is not necessary that the adoption deed should be executed, muchless it is required to be registered.

The provisions of Hindu Adoption and Maintenance Act indicate the forms of adoption, capacity and requisites of valid adoption and persons who are capable of giving in adoption and other conditions for valid adoption. Section 16 deals with presumption with regard to registration of the document of adoption. In the instant case, the unregistered document is sought to be marked, the presumption under Section 16 is not available to such person. However, the same has to be proved by cogent evidence. The question of applicability of Section 17 of the Registration Act would arise only if the adoption deed confers some immoveable property right on the person who is going to be adopted. In the absence of such recital in the instrument, it cannot be said that Adoption Deed is required to be registered.

As per Schedule I-A under Section 6(3) of the Indian Stamps Act, the State amendment indicates that the adoption deed recording adoption or conferring or purporting to confer an authority to adopt requires the stamp duty of Rs.35/- as per Act 10 of 1967, which came into force from 20-10-1967. Inasmuch as in the instant case, the Adoption Deed was executed on stamp paper worth less than Rs.35/-,

penalty thereon requires to be collected. Unless the balance stamp duty on the Adoption Deed is collected from the defendants, the same cannot be made admissible in evidence.

For the foregoing reasons, the C.R.P. is dismissed. However, having regard to the fact that the Adoption Deed is executed on stamp paper worth less than Rs.35/-, the Court below shall give opportunity to the defendants to permit them to make an appropriate application to impound the Adoption Deed for collection of penalty to make the document admissible in evidence.

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N.V. RAMANA, J.

Date: 27th November, 2003.
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[1] 1979 (2) APLJ 280